THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.9017 of 1998

DATED: 28.02.2007

BETWEEN:

M/s. Liquors India Limited,
Nacharam, Hyderabad, rep. by its
Managing Director Sri G. Ramesh.

…Petitioner

and

The Government of A.P., rep. by its
Prl. Secretary to Govt., Revenue (Excise.II)
Department, Secretariat Buildings,
Hyderabad.

....Respondents

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ORDER:

This writ petition is filed seeking a mandamus to declare the action of the respondents in not acceding to the demand of the petitioner to sell the stocks of various categories of liquors supplied to the third respondent-A.P. Beverages Corporation Limited at the agreed price within a period of 90 days from its supply to the third respondent-Corporation, as arbitrary and illegal, and consequently direct the third respondent to sell the stocks at the agreed rate till the expiry of 90 days from the date of supply.

The brief facts of the case are that the petitioner, being one of the distilleries, dealing with the manufacture of Indian Liquors, supplied various brands of liquors to the third respondent-A.P.Beverages Corporation Limited, Hyderabad (for short "the Corporation") as per the Tender Notification No.APBCL/97-98/1, dated 31.03.1997. As per Tender Condition No.2.12(D), the third respondent has to dispose of the stocks supplied by the distilleries within a period of 90 days from the date of receipt of stocks in any depot of the Corporation and if any stocks remain unsold, then it is at liberty to reduce the issue price. Subsequently, the Government of A.P. issued G.O.Ms.No.166, Revenue (Excise.II) Department, dated 18.03.1998, revising the excise duty by reducing Rs.20/- per proof litre in respect of

category ‘A” and by enhancing to Rs.10/- per proof litre in respect of category ‘B,C & D’. In pursuance of the G.O., the Corporation issued a notice, dated 19.3.1998, calling upon the petitioner to liquidate all the stocks supplied by it lying unsold in the depots of the Corporation before 31.3.1998, otherwise the Corporation would sell the stocks at the reduced price from 1.4.1998 and the loss will have to be suffered by the petitioner alone. Hence, this writ petition.

A counter has been filed by the third respondent stating that condition 2.12 D is only a condition enabling the Corporation to dispose of stocks remaining unsold for a period of 90 days from the date of receipt of stocks by reducing the Issue Prices suitably, but that does not restrict the powers of the Corporation and does not mandate that it must dispose of the stocks within a period of 90 days from the date of receipt of stocks. Further condition 2.5 A(i) of the tender permits the Corporation to revise the prices consequent upon variation in the statutory duties and taxes on IML & BEER. It is further stated that under the contract, the prices can vary when there is variation in statutory duties and the dispute raised by the petitioner is one under the contract.

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

Admittedly, this Court while issuing Rule nisi, was not inclined to pass interim orders. The grievance of the petitioner is that the third respondent-Corporation has not given effect to the terms of the Contract. May be it is true and even if it is so, the petitioner’s remedy is to file a suit claiming damages against the Corporation, but not this Writ Petition.

Hence, this Writ Petition is devoid of merits and is accordingly dismissed with a liberty to the petitioner to approach the Civil Court and claim damages, if it so chooses. No costs.

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(GOPALA KRISHNA TAMADA,J)

28.02.2007
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